



**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

Taylor House, London

Appeal reference: TC/2022/14011

*VALUE ADDED TAX – exemption for supplies of education – definition of an eligible body in  
Note (1) Group 6 – appeal allowed*

**Heard on:** 4, 5 and 7 March 2025

**Further written submissions:** 2 April 2025

**Judgment date:** 09 May 2025

**Before**

**TRIBUNAL JUDGE BLACKWELL  
MRS SHAMEEM AKHTAR**

**Between**

**SOLENT PATHWAY CAMPUS LIMITED**

**Appellant**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellant: Mr Owain Thomas KC, instructed by KPMG LLP

For the Respondents: Ms Charlotte Brown, of counsel, instructed by the General Counsel and  
Solicitor to HM Revenue and Customs

## DECISION

### INTRODUCTION

1. The Appellant (“SPCL”) is, and was at all relevant times, a private limited company supplying various education courses. SPCL is a joint venture partnership between Solent University (the “*University*”) and QAHE (Solent) Limited (“*QAHE*”).
2. On 14 December 2021 SPCL submitted an Error Correction Notice under section 80 of the Value Added Tax Act 1994 (“VATA 1994”) on the basis that the underlying supplies were exempt from VAT. The claim was in the sum of £356,030.64 for the periods 01/20 to 10/21. The claim was refused by HMRC in a decision dated 11 November 2022. SPCL appeals against that refusal.
3. The issue before the Tribunal is whether or not SPCL is an “eligible body” pursuant to Note 1(b) to Schedule 9, Group 6 of VATA 1994 (“Note 1(b)”) on the basis that it is a “college” of a UK university, or alternatively, pursuant to Note 1(f) of Group 6 to Schedule 9 VATA 1994 (“Note 1(f)”) on the basis it makes supplies of teaching English as a Foreign Language (“TEFL”).
4. The structure of this decision is as follows. We first set out the legislative framework and then summarise the arguments of each of the parties. We then make initial findings by reference to the evidence. We then make further findings specifically in relation to (i) if SPCL is a college of the University; and (ii) the TEFL issue.

### THE LEGISLATIVE FRAMEWORK

#### The Principal VAT Directive

5. Article 132 of the Principal VAT Directive (2006/112/EC) requires Member States to exempt certain supplies of education:

#### “Chapter 2 – Exemptions for certain activities in the public interest

##### Article 132

1. Member States shall exempt the following transactions:

...

(i) the provision of children’s or young people’s education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects;”

6. Article 133 sets out relevant exceptions to Art.132(1):

##### “Article 133

Member States may make the granting to bodies other than those governed by public law of each exemption provided for in points (b), (g), (h), (i), (l), (m) and (n) of Article 132(1) subject in each individual case to one or more of the following conditions:

(a) the bodies in question must not systematically aim to make a profit, and any surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied;

(b) those bodies must be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned;

(c) those bodies must charge prices which are approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to VAT;

(d) the exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT.

Member States which, pursuant to Annex E of Directive 77/388/ EEC, on 1 January 1989 applied VAT to the transactions referred to in Article 132(1)(m) and (n) may also apply the conditions provided for in point (d) of the first paragraph when the said supply of goods or services by bodies governed by public law is granted exemption.”

### **Domestic legislation**

7. Section 31(1) of VATA 1994 specifies, so far as is relevant:

“A supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9...”

8. Schedule 9, Part II, Group 6, so far as is relevant, specifies:

#### **“Group 6— Education**

Item No.

1. The provision by an eligible body of—

- (a) education;
- (b) ... ; or
- (c) vocational training.

...

Notes:

(1) For the purposes of this Group an “eligible body” is—

- (a) ...
- ...
- (b) a United Kingdom university, and any college, institution, school or hall of such a university;
- ...
- (f) a body not falling within paragraphs (a) to (e) above which provides the teaching of English as a foreign language.

(2) A supply by a body, which is an eligible body only by virtue of falling within Note 1(f), shall not fall within this Group insofar as it consists of the provision of anything other than the teaching of English as a foreign language.”

### **Interpretation of exemptions**

9. It is common ground that the exemption should be strictly but not narrowly interpreted. That is because it represents an exception from the general rule that VAT is levied at the standard rate on all supplies of goods and services in the course of business. However, a “strict” construction is not to be equated, in this context, with a restricted construction. The terms used to specify the exemption must be given the meaning which they can fairly and properly bear in the context of the exemption: see Chadwick LJ in *Expert Witness Institute v CCE* [2001] EWCA Civ 1882; [2002] STC 42 at [17] and [19].

10. In *HMRC v AXA UK Plc* (Case C-175/09); [2010] STC 2825 the CJEU summarised these principles as follows:

“25. It is also clear from the case law that the terms used to specify the exemptions set out in art 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all goods and services supplied for consideration by a taxable person. Nevertheless, the interpretation of those terms must not deprive the exemption in question of its intended effect (see, to that effect, *Don Bosco Onroerend Goed* (para 25) and the case law cited; *Future Health Technologies* (para 30); and *EMI Group Ltd v HMRC* (Case C-581/08) [2010] STC 2609, para 20).”

## **Brexit**

11. The impact for this appeal of the UK’s withdrawal from the EU is also common ground between the parties.

12. The time period of the claim spans from period 1 November 2019 to 30 October 2021. The UK ceased to be a member of the EU on 31 January 2020. There followed an implementation period during which EU law continued to apply in the UK until 31 December 2020, pursuant to the Withdrawal Agreement signed by the UK and the EU.

13. The periods in dispute pre-date the Retained EU Law (Revocation and Reform) Act 2023 (“REULA 2023”). Pursuant to sections 2 and 4 of the Withdrawal Act 2018 (“WA 2018”), as amended but before amendments made by REULA 2023, after completion of the implementation period on 31 December 2020, EU derived domestic legislation (like VATA 1994) continued in force after 31 December 2020 as it did on 31 December 2020 subject to certain exceptions and fell to be recognised in domestic law in the same way as previously.

14. Section 5 WA 2018 provided that the principle of the supremacy of EU law continued to apply on and after 31 December 2020 insofar as it is relevant to the interpretation of legislation enacted before 31 December 2020.

15. Further section 6 WA 2018 provided:

### **“6 Interpretation of retained EU law**

(1) A court or tribunal—

- (a) is not bound by any principles laid down, or any decisions made, on or after IP completion day by the European Court, and
- (b) cannot refer any matter to the European Court on or after IP completion day.

(2) Subject to this and subsections (3) to (6), a court or tribunal may have regard to anything done on or after IP completion day by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal.

(3) Any question as to the validity, meaning or effect of any retained EU law is to be decided, so far as that law is unmodified on or after IP completion day and so far as they are relevant to it—

- (a) in accordance with any retained case law and any retained general principles of EU law, and
- (b) having regard (among other things) to the limits, immediately before IP completion day, of EU competences.

(4) But—

- (a) the Supreme Court is not bound by any retained EU case law,
- (b) ...
- (ba) a relevant court or relevant tribunal is not bound by any retained EU case law so far as is provided for by regulations under subsection (5A), and
- (c) no court or tribunal is bound by any retained domestic case law that it would not otherwise be bound by.

(5) In deciding whether to depart from any retained EU case law by virtue of subsection (4)(a) or (b), the Supreme Court or the High Court of Justiciary must apply the same test as it would apply in deciding whether to depart from its own case law.”

16. Retained case law includes domestic and EU case law: see section 6(7) WA 2018.

17. It follows that the resolution of this dispute should proceed by considering the relevant provisions of EU law. The authorities with which this appeal is concerned all pre-date Brexit in any event. To the extent that the rights accrued by SPCL arose prior to 31 December 2020 then they are subject to EU law as a result of the Withdrawal Agreement being implemented in to UK law. To the extent that the rights accrued by SPCL arose after 31 December 2020 they are subject to the provisions of the WA 2018 and retained EU law and retained EU case law.

18. Neither party suggests that any different result arises in relation to later periods in any event, due to the “bespoke solution” for UK VAT and excise laws in section 28 Finance Act 2024.

### **College of a University**

19. In *SAE Education Ltd v HMRC* [2019] UKSC 14; [2019] STC 768 (“*SAE*”) Lord Kitchin first reviewed the domestic and EU legislation and then set out the following “material” points in relation to the meaning of the phrase “college of such a university” in Note 1(b):

“[48] First, for its activities to fall within the scope of Item 1(a), any college of a university, as an eligible body, must provide education.

[49] Secondly and as we have seen, the supply of educational services is exempt only if it is provided by bodies governed by public law or by other bodies recognised by the member state as having similar objects. Parliament has exercised the discretion conferred upon it by recognising for this purpose the provision of education by universities, and it has done so regardless of whether those universities are charities or are private and run for profit. If, as I believe, the phrase “a United Kingdom university” in Note 1(b) therefore extends to private universities which are run for profit then in my opinion the same must apply to the expression “any college of such a university”. There can be no justification for treating the scope of the two expressions differently in this respect. Further, were it otherwise, private colleges of a university providing higher education services would be obliged to charge VAT on their supplies, rendering them more expensive and so restricting the opportunities of students to access them, contrary to the purpose of the exemption.

[50] Thirdly, there is in my view nothing in Note 1(b) or the broader context which would justify limiting the scope of the phrase “any college of such a university” to colleges which are a constituent part of a university in a constitutional or structural sense. To the contrary, if satisfaction of such a constituent part test were required, it would effectively exclude commercial providers such as SEL from the exemption for it is a test they will rarely if ever be able to satisfy. That, so it seems to me, would be contrary to the principle of fiscal neutrality in the light of the decision by Parliament not to

limit the bodies it has recognised in Note 1(b) to those which do not make a profit.

[51] Fourthly, the United Kingdom must be taken to have recognised that a college (or, for that matter, a school or hall) of a university within the meaning of Note 1(b) has similar objects to those of a university which is governed by public law and which provides education to young people. In my opinion this consideration focuses attention on the objects of the body in issue, the nature of the educational services that it supplies, and how integrated those services are with those of the university. Put another way, it is necessary to examine the characteristics of those educational services and the context in which they are delivered rather than the precise nature of the legal and constitutional relationship between the body that provides them and its university.

[52] Of course, I recognise that if a college is a part of a university in a constitutional or structural sense then it is overwhelmingly likely that any educational services it provides will reflect this relationship and so the college may properly be regarded as a college of that university within the meaning of Note 1(b). But it does not follow that the converse is also true. It is entirely possible that an independent and private body which conducts its business of providing education for profit will be so integrated with a university that its educational activities and objects are indistinguishable from those of a college which is constitutionally part of the university or, indeed, from those of the university itself.

[53] All of these matters point to the conclusion that the ‘integration’ test explained in the *SFM* case and adopted by the FTT is essentially correct. However, I think the factors to be considered do need some refinement. As I have said, the presence of a foundation or constitutional document or some other legal relationship establishing the college as a constituent part of the university in a constitutional or structural sense will be sufficient to prove that it is a college of the university within the meaning of Note (1)(b), save in an exceptional case. But that is not a necessary condition. In assessing whether a body is a college of a university the following five questions are also likely to be highly relevant: (i) whether they have a common understanding that the body is a college of the university; (ii) whether the body can enrol or matriculate students as students of the university; (iii) whether those students are generally treated as students of the university during the course of their period of study; (iv) whether the body provides courses of study which are approved by the university; and (v) whether the body can in due course present its students for examination for a degree from the university.

[54] If a body can establish the presence of each of these five features, focused as they are on the objects of the body, the relationship between the students of the body and the university and the degree to which the activities of the body are recognised by and integrated with the university, then in my judgment it is highly likely to be a college of the university within the meaning of Note (1)(b). Again, I do not suggest that there may not be other cases where the degree of integration of the activities of the body and the university is such that it may properly be described as a college of the university in light of some or most of the factors I have identified and other aspects of the services it supplies. All will depend on the particular circumstances of the case.

[55] However, some of the *SFM* factors are, in my view, likely to be of much less assistance in light of the matters to which I have referred. Here I have in mind: (i) whether the body is independent from the university; (ii) whether the body is financially dependent on the university, or whether the body and the university are financially interdependent; (iii) whether the body generates any

distributable profit; (iv) whether the body is entitled to public funding; (v) the presence or absence of permanent links between the body and the university; (vi) the degree of physical proximity between the body and the university; and (vii) whether the body has any obligation to offer a minimum number of university places. I do not suggest that none of these matters will ever have any evidential weight. For example, the duration of the relationship between the body and the university and how long it may be expected to last may have some relevance, if only as part of the background, but these and similar matters are unlikely to be determinative.

[56] In my judgment it follows that the reasoning of Peter Gibson LJ in the *University of Leicester Student's Union* case at para 36<sup>1</sup> (which I have set out at para 34 above) needs some qualification. I accept that the words “in those cases where there are separate entities which are nevertheless parts of the university, any of those separate entities” in Note 1(b) include a college, institution, school or hall of a university which is separate from the university but which is nevertheless a part of it in a constitutional or structural sense. But, for the reasons I have given, I do not accept that the scope of Note 1(b) is limited to such entities, and if that is what Peter Gibson LJ meant by the use of these words, I respectfully disagree with him. In my view the correct approach was expressed succinctly by Arden LJ in *FBT* at para 55,<sup>2</sup> which I have recited above. The question is whether the college and the university are so integrated that the entity is imbued with the objects of the university, and that is best answered in the manner I have described.

...

[70] ...The correct approach is to ascertain the nature and purpose of the educational activities of the college in issue, and whether those activities are so integrated with those of its university that it may properly be said to have the same objects as that university. That exercise may conveniently be carried out in the manner I have described at paras 47 to 56 above.”

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<sup>1</sup> In *CCE v In University of Leicester Students Union* [2001] EWCA Civ 1972; [2002] STC 147 Peter Gibson said at [36] “Note 1(b) on its face refers to five entities, a United Kingdom University, and four entities of such a University. The conjunction connecting ‘a United Kingdom University’ with the four other entities is the word ‘and’, not ‘including’. Further, the four other entities are alternative to each other as can be seen by the conjunction ‘or’ between ‘school’ and ‘hall’. On the ordinary and natural meaning of the words used in Note 1(b) I would construe them as covering both a university itself and, *in those cases where there are separate entities which are nevertheless parts of that university, any of those separate entities*. Furthermore, the common characteristic of all those four entities in my opinion is that they are suppliers of education. Thus, to take London University as an example, colleges like University College London, and schools like the School of Oriental and African Studies, are all of London University. Again, to take Oxford University as another example, it has colleges and halls (which are what some entities later to become colleges called themselves when formed). Accordingly, just as Note 1(a) covers schools supplying primary and secondary education, so Note 1(b), in my view, covers Universities and other entities supplying university education. If it had been intended that Note 1(b) should cover entities with functions and purposes other than the supply of education, such as a students’ union, I would have expected that to have been made explicit. These are provisions conferring exemptions and must be construed restrictively. On that construction, I reject Mr. Baldry’s submission that the Union is an eligible body within Note 1(b). It does not come within ‘a United Kingdom University’, being an entity distinct from the University, nor is it an institution of the University, supplying, as it does, no education.” [emphasis added to quoted words, our footnote]

<sup>2</sup> In *Finance And Business Training Ltd v HMRC* [2016] EWCA Civ 7; [2016] STC 2190 Arden LJ said at [55] “Parliament is obviously constrained by Article 132.1(i) as to what bodies it can include. In those circumstances, it has taken the view that the body must be one which provides education in like manner to a body governed by public law, that is, there must be a public interest element in its work. It has decided to draw the line, in the case of universities to those colleges, halls and schools which are integrated into universities and which are therefore imbued with its objects.” [our footnote]

20. In *St Patrick's International College Ltd and Ors v HMRC* [2023] UKFTT 408 (TC); [2023] STFD 881 at [198] ("*St Patrick's*") Judge Cannan observed that:

"[t]he question whether an organisation is 'imbued with the [same] objects' as a university is not simply a reference to the objects identified by an institution in its mission statements, for example the aim of widening participation in education. ... objects in this context means the way in which the organisation and the university provide education. It encompasses the relationship between the two institutions and the way in which the institutions achieve their overall objective of providing education."

#### THE APPELLANT'S CASE

21. SPCL's case is that SPCL is a college of the University. If the Tribunal is not with them on that, they say SPCL is an "eligible body" on the basis it makes supplies of TEFL. They say that such supplies are a single composite supply and that the predominant element is TEFL and that therefore the supplies are exempt.

#### College of a University

22. In summary SPCL's case is that it is a college of the University because they say that all five factors set out by Lord Kitchin in SAE are met. They acknowledge that HMRC dispute factors (ii) and (v) but submit that a proper analysis of the factors supports SPCL's case, specifically (in summary):

(1) while acknowledging that the University (rather than SPCL) actually enrolls the students, they note that SPCL is heavily involved in the process leading to the act of enrolment and say it is artificial to concentrate on the final element of the process that leads to enrolment; and

(2) while acknowledging SPCL presents its students for a National Qualifications Framework ("NQF") level 3 award (rather than a degree that is NQF level 6), SPCL says HMRC's interpretation of the exemption is overly rigid, focusing only on the word "degree" rather than the broader provision of university education. Students applying for the IFP are simultaneously applying for a degree program, with guaranteed progression upon successful completion. The IFP is equivalent to the first year on the University's own four-year programmes.

23. SPCL also says the following six factors are relevant in addition to the five highly relevant factors identified by Lord Kitchin:

(1) **Ownership:** SPCL is a (partly-owned) subsidiary of the University with University appointed directors on its board;

(2) **Examination and Assessment:** the University validates the courses and provides the results to students through its portal;

(3) **Visas:** the University is the sponsor for the students' visas;

(4) **Development:** The University actively monitors the IFP and instigates appropriate changes;

(5) **Regulation:** regulation of the pathway course is through the University; and

(6) **Marketing:** in marketing materials the pathway is described as a Solent University pathway, and being taught on Solent University's main campus and the access to facilities of the University is specifically highlighted as a feature of the courses.

24. SPCL also notes the similarity between their situation and an example given in HMRC's published guidance (example three at VAT39360).

## **Teaching of English as a foreign language**

25. SPCL says it is first necessary to consider, in line with the approach of the Court of Appeal in *Pilgrims Language Courses Ltd v C&E Comrs* [1999] STC 874; [1999] EWCA Civ 1939 (“*Pilgrims*”), whether elements of the course which would not when taken individually consist of supplies of foreign language tuition, can nonetheless be recognised as forming part of a single composite supply of TEFL tuition.

26. SPCL says that to qualify as TEFL all that is necessary is that it is directed at non-native speakers. It is immaterial what is the existing proficiency of the students or whether it is English for a general or specific use. They say that the evidence points to it being TEFL.

27. SPCL acknowledges that there are undoubtedly two elements of the supply of the IFP. They say the main part of the course constitutes the supply of English for Academic Purposes (“EAP”), but acknowledge the supply also includes important elements of subject specific modules which have a clear connection with the subject matter of the degree courses to which the students are intended to progress. But there is clearly one overall aim from the customer’s point of view, so there is a single supply.

28. SPCL says that the principles to be applied are those in Case C-349/96 *Card Protection Plan v CEC* [1999] STC 270 (“*CPP*”) at [29] and Case C-41/04, *Levob Verzekering BV v Staatssecretaris van Financiën* [2006] STC 766 (“*Levob*”) at [22] to [29].

29. SPCL says that if there is a single composite supply, then the characterisation of that supply (for the purposes of determining whether it is an exempt supply) should be done by applying the “predominant element” test, where this was possible on the facts. Where it was not possible then other approaches, such as asking what the overarching supply was, were permissible. They refer to *HMRC v Gray & Farrar* [2023] EWCA Civ 121; [2023] STC 327 (“*Gray & Farrar*”) at [41] and [46]-[50] as authority for this.

30. In the present case the application of the predominant element test is possible and the predominant element is TEFL.

31. It is also SPCL’s case that if SPCL supplies both EAP/TEFL and something else, Note 2 of Group 6 to Sch. 9 VATA (“Note 2”) is not compatible with EU law. However they acknowledge that this Tribunal is bound by the Court of Appeal in *Pilgrims* on this, and so the point has not been pursued before us.

## **HMRC’S CASE**

32. HMRC’s case is that SPCL is not an eligible body under either provision.

## **College of a University**

33. In summary SPCL is not an eligible body within Note 1(b) as it is not a college of a university applying the criteria in *SAE*.

34. They say that the highly relevant factors identified in (ii) and (v) of [53] in *SAE* are not met, and that (v) carries the most weight on the facts of the case. They say that factor (v) is not met as the award is not a university level qualification. They say that the qualification must be of at least NQF level 4, whilst the IFP leads to the FdCert which is NQF level 3.

35. HMRC say that the University and SPCL cannot have the same objects. The University’s objects are to provide university level education (of at least NQF level 4). They say SPCL’s object is to provide a lower level of education (NQF level 3) as well as to recruit international students and increase revenue for the University.

36. HMRC say that as the IFP is primarily intended to give international students an opportunity to gain entry to UK degree courses, it is therefore a prior or preliminary step to a

degree course. They say that comparisons with the four-year foundation courses offered by the University are misconceived, because those courses are integrated with a degree rather than being a standalone qualification. In any event, they are offered by the University, and a university is an “eligible body”.

### **Teaching of English as a foreign language**

37. HMRC first say that the supplies do not amount to supplies of TEFL. HMRC say TEFL should be confined to teaching students the necessary foundation linguistic skills to enable them to communicate generally in English, relying on the definition quoted in *Pilgrims* at [886]:

“The expression ‘teaching English as a foreign language’ is, in our judgment, apt to mean all that is necessary for the purpose of imparting to the student the grammar, vocabulary, spelling, and usage of the English language and of assisting the student to take in, retain, understand, and think in that language so as to be able to communicate in it, orally and in writing.”

38. In their skeleton argument and written closing submissions HMRC said this definition was by the Supreme Court. Before me they accepted it was the definition used by the VAT & Duties Tribunal that the Court of Appeal was quoting (without approving it) as part of that Tribunal’s findings.

39. HMRC state that the supplies do not meet this definition as (i) they are at too high a level and (ii) they are not general English but for a specific (academic) purpose.

40. Further HMRC say that it is unclear how the course instructs participants in English beyond being part of an immersive environment. HMRC rely on the comment of Judge Nicholas Paines QC in *OISE Limited v HMRC* [2016] UKFTT 749 (TC) where he said of the definition in *Pilgrims* at [273] that the:

“focus is on the positive activity of ‘imparting’ knowledge of English. I find it correct as a generalisation that a supply does not amount to teaching EFL insofar as it merely puts the participant in an English-speaking environment in which their English is improved as a result of their practising it, hearing others speak it or seeing examples of written English in daily life.”

41. HMRC also rely on a passage from Hansard, recording the speech of Mr Harry Greenway,<sup>3</sup> which they say shows Note 1(f) was aimed at English language tuition to foreign students through foreign language schools. HMRC say that the rationale for this was to generate revenue in the UK through foreign students attending these language schools and then working in the UK. As such the focus was very much on learning how to communicate in English.

42. If, contrary to HMRC’s primary case, the Tribunal finds that SPCL’s supplies are supplies of TEFL, HMRC say Note 2 applies to prevent SPCL’s supplies from falling within Note 1(f). It will be recalled that Note 2 says:

“A supply by a body, which is an eligible body only by virtue of falling within Note 1(f), shall not fall within this Group insofar as it consists of the provision of anything other than the teaching of English as a foreign language.”

43. HMRC assert that “insofar as” means “if”. It follows they say, that if the supplies of International Foundation Programmes (“IFPs”) are TEFL then they must not consist of anything other than TEFL to benefit from the exemption.

44. HMRC acknowledged (when pressed in submissions) that the supply is a single supply. However, they say that this is irrelevant. HMRC say that the statutory reference to “consists

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<sup>3</sup> Hansard Volume 243 Column 1008: debated on Thursday 19 May 1994

of” requires the Tribunal to look at the constituent elements of the supply and not (contrary to SPCL’s submission) apply the principles in *CPP/Levob*.

## **THE HEARING**

### **Bundles and pleadings**

45. The parties provided a bundle of 1,228 pages in addition to an authorities bundle. We were also provided with three additional authorities.

46. The parties each provided a skeleton argument, which was updated to form their written closing. Post-hearing, following the release of the decision in *St Patricks v HMRC* [2025] UKUT 101 (TCC) on 24 March 2025, we also received further submissions on 2 April 2025.

47. We have taken account of all the matters set out in the pleadings and the passages in the bundles referred therein, in addition to the oral evidence and submissions. However, mindful of the *Practice Direction from the Senior President of Tribunals: Reasons for decisions*, we do not repeat everything in this decision. Stating reasons at any greater length than is necessary is not in the interests of justice.

### **Witnesses**

48. We heard live witness evidence in the following order:

- (1) Tim Harris, Provost and Executive Dean of QA Higher Education;
- (2) Tim Slater, Chief Financial Officer of QAHE and director of SPCL;
- (3) Jonathan Ridley, Associate Vice Chancellor and Associate Professor of Engineering Education at the University and director of SPCL.

49. HMRC do not take any issue as to the credibility of the witnesses. They suggest, however, that at times Mr Harris and Mr Slater’s evidence was partisan, giving responses to questions to further SPCL’s appeal rather than responding to the questions asked. We disagree. We consider this is more likely to reflect their lack of experience in giving evidence. When a question was re-put after not being answered directly the first time, they subsequently addressed it. Giving evidence is not always easy for those who are inexperienced in such proceedings.

50. We agree with Mr Thomas’s submission that all witnesses were credible and reliable. Each made clear when they were giving evidence of their understanding without direct knowledge, each was prepared to accept challenge when they did not directly know the answer to the particular questions and each was content to state that they did not know. More broadly, their evidence was delivered in a considered way in order to assist the Tribunal.

## **INITIAL FINDINGS**

### **Ownership**

51. SPCL is a joint venture partnership between the University and QAHE.

52. The University subscribed for 510 A ordinary shares of £1 each in SPCL and QAHE (Solent) Limited subscribed for 490 B ordinary shares of £1 each.

### **Contractual relationships**

53. The arrangements between QAHE and the University are contained in three agreements:

- (1) a Shareholders Agreement
- (2) the QAHE Services Agreement; and
- (3) the University Services Agreement.

### ***Shareholders Agreement***

54. This agreement is between the University, SPCL and QAHE (Solent) Limited.
55. The recitals include “The Company shall comply with and carry on the Business in accordance with the terms and conditions of this Agreement insofar as they relate to the Company.” “Business” is defined as setting up and operating up a Pathway campus of the University for the provision of education to certain students of the University.
56. The shareholders are required to, except as otherwise agreed in writing by all of them, exercise all voting rights and other powers of control available to them in relation to SPCL to procure (amongst other things) that the business of SPCL consists exclusively of the Business.
57. The agreement provides that the Board shall consist of six Directors and shall be made up of three University Directors and three QAHE Directors. The chair rotates between the University and QAHE appointed directors on an annual basis.
58. There are requirements for SPCL to observe the University’s ethics, anti-bribery and anti-corruption policies.
59. The agreement records that it is the intention of the parties that SPCL will be exempt from charging VAT on its supplies. There are termination provisions in the event that VAT is payable.

### ***QAHE Services Agreement***

60. This agreement is between the University, SPCL and QAHE. The background to the agreement is explained in the recitals, which state that SPCL is established to “deliver pathway courses which prepare students for entry to higher education programmes at the University” and that the purpose of the agreement is for QAHE to provide services to SPCL to enable it to “offer, recruit for, operate and run the programmes from the Programme Location”.
61. The services provided by QAHE are set out in Schedule 1, Part I of the agreement. They include to:
- (1) assist the University by recommending improvements to the course materials;
  - (2) provide prospective students with:
    - (a) key information about the programmes and accommodation in a tailored pre-arrival pack and in line with CMA requirements;
    - (b) guidance concerning visa requirements;
  - (3) market the programmes;
  - (4) refer all applications for admission to the University; and
  - (5) recruit staff who deliver the Programmes and ensure there are sufficient teaching and administrative staff.
62. To allow the University to maintain control over the course and the award of the qualification, the agreement (2.1) requires QAHE to:
- (1) observe the University’s Academic Policies and satisfy the University’s quality assurance process;
  - (2) not damage the reputation of the University, including with regard to the Tier 4 licence issued by the Home Office;
  - (3) to carry out the services in accordance with the University’s reasonable instructions issued from time to time;

- (4) teach the programmes on the University campus unless otherwise agreed;
- (5) provide the University with access to personnel, assets, accounts records etc; and
- (6) provide the University with reports as agreed from time to time.

### ***University Services Agreement***

63. The agreement contains the following significant definitions:

**“Academic Policies”** means those policies, procedures and regulations issued and amended by the University from time to time governing the academic conduct of the Students and the Programmes;

**“Award”** means an award of the University to be given to Students by the University upon successful completion and passing of a Programme;

**“Marks”** means the name “Southampton Solent University” together with the logos incorporating the name and any other trade name or mark owned by the University from time to time;

**“Programmes”** means the programmes of pathway courses which prepare the Students for entry on to higher education programmes at the University to be offered and delivered by the Company to Students pursuant to the terms of this Agreement, as set out in Schedule 4 on the timescales contained therein unless agreed otherwise between the Parties from time to time. Programmes listed in Schedule 4 may be varied, removed or added to, as agreed between the Parties from time to time and each shall be a “Programme” as appropriate from time to time;

**“Programme Specification”** means the specification for each of the Programmes as provided by the University to the Company from time to time;

**“Progressed Student”** means a Student who has met the Progression Criteria and who registers on a course or programme at and with the University following successful completion and passing of a Programme;

**“Progression Criteria”** means in relation to each Programme, the specific requirements Students must meet in order to progress onto a University Programme, as set by the University (acting reasonably) and notified to the Company in writing from time to time;

**“Students”** means students subject to and obeying the Academic Policies, studying the Programmes as provided by the Company, and enrolled as students of the University and registered with the University for an Award.

64. The University is required to, amongst other things:

- (1) register Students as students of the University and ensure that all Students are entitled to all usual rights, benefits and access to facilities available to other students of the University (including the provision of a University ID card and access to accommodation services);
- (2) be jointly responsible with SPCL for providing induction; and
- (3) confer the relevant Awards to those Students who meet all of the University’s requirements in relation to the conferment of the Awards and have successfully completed and passed the Programmes which have been delivered by the Company in accordance with the relevant Programme Specifications.

65. The agreement confirms that the University is ultimately responsible for the academic quality of the Programmes, and for the standard of Awards conferred. The University is entitled to require SPCL to observe the Academic Policies. The agreement specifies that the quality

assurance of the Award shall be the ultimate responsibility of the academic board of the University.

66. SPCL agrees, amongst other things, to:

- (1) maintain standards in the operation of the Programmes that are at least equivalent to the standards that the University operates in respect of the programmes that it operates and delivers. This is later in the agreement noted to be a requirement of the Quality Assurance Agency's UK Quality Code for Higher Education;
- (2) not to do anything that would damage the standing of the University, including in respect of its Tier 4 visa licence.
- (3) conduct all examinations and assessments in respect of the Programmes and Awards and report to the University as to those Students that have successfully completed and passed the Programmes and that have met the Progression Criteria;
- (4) ensure that the students meet the minimum entry requirements in the Academic Policies;
- (5) ensure that the Students are enrolled as students of the University and bound by the Academic Policies;
- (6) comply with University procedures for enrolment and registration;
- (7) recruit and register Students to commence the Programmes on the enrolment dates set by the University;
- (8) implement and follow the University's complaints, disciplinary and appeals procedures within the Academic Policies;
- (9) produce monthly management accounts; and
- (10) on an annual basis enter into a licence to occupy the buildings where the Programmes are taught.

67. The University grants SPCL the right to use the Marks, but solely in connection with the marketing, recruitment of Students and provision of the Programmes.

68. The agreement was entered into on 10 April 2018. The parties subsequently entered into a "First Deed of Addendum" (the "Addendum Agreement") which specified that from that date the University Services agreement was to contain the following two new recitals:

"(B) The Parties acknowledge and agree that Solent Pathway Campus Limited (also known as the Company) is an affiliated and associated college of Solent University and also such Programmes provided thereby are affiliated and associated with Solent University and any reference to the Company and the Programmes provided thereunder shall be regarded as being associated and affiliated with Solent University.

(C) The Parties acknowledge and agree that the Programmes provided by Solent Pathway Campus Limited (also known as the Company) are university level and offered with the Intention of permitting the Students on to a Programme at the University which will result in the award of a degree."

69. The Addendum Agreement specifies that it was made and entered into on 10 April 2018, although the signatures indicate they were signed on 30 April 2019.

### **International Foundation Programmes**

70. This appeal is solely concerned with the "International Foundation Programmes" IFPs supplied by SPCL.

71. As set out in the Validation Proposal for the IFP, the IFP “specifically aims to develop the linguistic competence of international students, with a focus on the academic use of English, alongside the development of core academic skills and subject knowledge in their chosen pathway subject”.

72. There is a two term IFP and a three term IFP. The three term IFP is for students who are 0.5 International English Language Testing System (“IELTS”) points below the English entry requirement for the IFP. The additional non-credit bearing term is composed of one additional module, Language & Skills for Academic Study, designed to help learners develop their English language skills to the level required to begin the IFP.

73. The entry requirements for the IFP include an English Language requirement of IELTS 5.5. The IELTS test is an industry standard test that is used to assess English language capability. The University requires international students commencing degree level study to have an IELTS score of at least 6.

74. Students will choose a specific pathway depending upon their target degree course. There are three possible pathways: (i) Business and Management, (ii) Creative Industries and (iii) Science, Technology, Engineering and Mathematics (“STEM”).

75. The Business and Management Pathway can lead to 15 different degrees including BSc (Hons) Accountancy and Finance, BA (Hons) Beauty Promotion and BSc (Hons) Maritime Business. The Creative Industries Pathway can lead to 23 different degrees including BA (Hons) Computer Games (Art), BA (Hons) Make Up and Hair Design and BA (Hons) Prosthetics and Special Effects Design. The STEM Pathway can lead to 17 different degrees including BA (Hons) Computer Games (Design), BEng (Hons) Yacht Design and Production and BEng (Hons) Electronic Engineering.

76. The IFP comprises four core modules which are common to all three pathways. These core modules are (i) Academic English; (ii) Academic Language in Context; (iii) Applied Academic Skills; and (iv) the Research Project. The discussion of each below is taken from the Program Specification and Module Descriptors.

### ***Academic English***

77. This core module involves the development of core language skills (reading, writing, listening and speaking) to prepare the student for academic study at undergraduate level.

78. The module content and learning methods are set out as follows:

#### ***“Module Content:***

Academic Reading sessions will include reading techniques such as skimming, scanning and extensive reading, strategies for dealing with unknown language, and predicting content.

Academic Writing sessions will include: planning and structuring essays; organising and writing paragraphs; paraphrasing and summarising; referencing. Grammatical structures, and academic vocabulary, which are common in academic writing will be reviewed in depth to support your writing

Academic Listening sessions will involve listening to a variety of text formats (including podcasts, lectures and TED talks) and applying listening skills such as prediction, listening for overall meaning, listening for specific information, note-taking and summarising.

Academic Speaking will involve the preparation of and participation in a variety of oral communication tasks including seminar discussions, debates and presentations. This module also aims to enhance your accuracy and fluency in spoken English.

Embedded in the skills development is the enhancement of your academic vocabulary and grammatical accuracy.

***How will you learn?***

All learning is delivered through interactive seminar-style workshops - during these lessons, you will be expected to participate actively and interact with your tutor and the other students in your group.

This approach not only enhances the development of your English language skills but also creates an environment where you can share learning and knowledge.

In addition to the classroom-based lessons, you will be expected to complete regular directed learning (self-study) tasks, mainly via the university VLE. This will provide you with the opportunity to review and assimilate new and extended knowledge and also to demonstrate your development as an independent learner.”

79. Example descriptions of the summative assessments include the following:

“The reading exam will be based around a number of academic/semi-academic texts, some of which will be provided in advance of the exam. In the exam you will be required to answer questions on all texts.

...

In the Writing exam you will be required to write an essay of between 500 and 800 words – you will be given a choice of essay titles and you will need to choose one of these. The topic of the essay question will be the same as the topic of the texts in the Reading exam – however, you will not be given the essay titles until you start the examination.

...

In the Listening Test you are required to listen to a recording, which could be a lecture, an academic discussion, or a debate. As you listen, you need to make notes and then you will be given questions to answer about what you have just heard. You will be expected to answer the questions using only your notes.

...

In the Speaking Exam you will be assessed In groups of 3 or 4 - you will be given a topic to discuss for approximately 7-10 minutes and this will be related to the topic of the Listening Exam.

Following the group discussion, the examiner will ask each student two or three follow up questions on the same topic. Although the assessment is conducted as a group, you will be given an individual mark for this assessment.”

80. We have been provided with the reading exam, which is a comprehension exercise. This would purely seem to relate to English language.

81. We also have the marking criteria for the writing exam. “Language” accounts for 30% of the marks. A further 30% is for “Essay content” (such as comparing opposing viewpoints and analysing rather than just describing). Another 30% is for “Essay structure” such as using paragraphs and including a conclusion. The final 10% is for “Task Requirements” such as submitting on time and conforming to the word count.

82. We also have the mark scheme for the speaking exam. The marks for this are divided between “Grammar and Vocabulary” (25%), “Content”, which includes avoiding hesitation

and repetition and going beyond short sentences (25%), Interactive Communication, relating to maintaining and developing the discussion (40%) and pronunciation (10%).

83. The learning outcomes of this course are identified as follows:

“Demonstrate core language skills in reading, writing, speaking and listening to at least CEFR B2, the level required for successful entry to an undergraduate degree programme.

...

Identify general meaning and key information in an academic text and demonstrate an understanding of ideas and vocabulary within the text.

...

Demonstrate an awareness of the writing process, text organisation, language selection, paragraphing, summarising and referencing through the production of a piece of academic writing.

...

Show an ability to interpret meaning and identify key information in a recorded text.

...

Demonstrate an ability to participate in a variety of verbal tasks, such as academic discussions and debates.

...

Demonstrate independent learning skills, through the completion of regular directed study tasks.

...

Show an ability to work autonomously as well as collaboratively.”

### ***Academic Language in Context***

84. This core module aims to develop English language and academic skills in the context of the students’ specific area of study at undergraduate level.

85. The module content and learning methods are set out as follows:

#### ***“What will you learn on the module?”***

This is a pathway-specific ESAP (English for Specific Academic Purposes) module. In this module you will be introduced to the academic skills and language that are specific to your area of study at undergraduate level.

You will be exposed to academic reading and listening resources which are related to some of the topics covered in your pathway subject modules and classroom-based tasks will focus on developing language and vocabulary related to your chosen degree subject area.

A team-based learning approach will be adopted in this module and you will also be encouraged to engage with relevant University departments to find out more about your future target degree.

#### ***How will you learn?***

All learning is delivered through interactive seminar-style workshops - during these lessons, you will be expected to participate actively and interact with your tutor and the other students in your group. This approach not only

enhances the development of your English language skills but also creates an environment where you can share learning and knowledge.

In addition to the classroom-based lessons, you will be expected to complete regular directed learning (self-study) tasks, mainly via the university VLE. This will provide you with the opportunity to review and assimilate new and extended knowledge and also to demonstrate your development as an independent learner.”

86. Example descriptions of the summative assessments include the following:

***“Academic Poster Presentation***

You will be required to conduct research and prepare an academic poster on a chosen topic related to your area of study at undergraduate level. You will then deliver the information in a group presentation.

...

***Collaborative ‘diary’ report***

You will work collaboratively on an ‘assessment diary’ recording the development of the group task. Each member of the presentation group will contribute to the report.”

87. The assessment criteria for the academic poster are in the bundle. 30% of the marks are attributable to substantive content, under the heading “Topic”, such as “Have the three ‘pillars of sustainability’ been considered in the development of the project?” Another 30% of marks are attributable to “Design & Clarity”, this would seem more associated with graphic design rather than English language. Marks under this category are awarded for matters including “Are the images or graphics relevant (if used)?” The final 40% is allocated to “Presentation Delivery”, although English language is relevant many of the marking prompts for other skills such as group work (“Do group members contribute equally?”), planning (“evidence of preparation”), body language, and thinking on their feet (responding to questions).

88. The learning outcomes of this course are identified as follows:

“Recognise and use academic language, structures and vocabulary related to the future field of study at undergraduate level.

...

Develop an ability to communicate effectively in academic contexts, both in written and verbal formats.

...

Show an ability to work collaboratively with peers.”

***Applied Academic Skills***

89. The aim of the module is stated as follows:

“The aim of this module is to develop the necessary skills for academic learning and study and in doing so provide you with the tools needed to be successful in a Higher Education environment. In addition, the module will develop your confidence and skills in being able to reflect on your learning and to think critically. These are core skills which are required to produce and complete coursework and assignments at undergraduate level.”

90. The module content and learning methods are set out as follows:

***“What will you learn on the module?”***

The scope of this module and its content is wide and varied. The module is structured to help you gradually develop learner independence – a combination of practical and interactive sessions and independent tasks will help you to gain and practice skills in:

- o Personal and study skills (e.g. time management, assessment planning)
- o Learner training: developing independent learning skills/learner autonomy
- o Digital literacy - basic IT skills including the use of Word, Excel and PowerPoint, email communication, etc.
- o Academic seminar discussions
- o The importance of good academic conduct – referencing, citation & avoiding plagiarism
- o Preparation for assessment

On successful completion of this module, you will have enhanced your existing ICT skills, developed competences in research and study, the ability to work independently and with others and also learned how to maximize your opportunities as a student at a UK university.

### ***How will you learn?***

This is a very practical module so all learning will be delivered through interactive seminar-style workshops. You will be expected to participate actively and interact with your tutor and the other students in your group.

In addition to the classroom-based lessons, you will be expected to complete regular directed learning (self-study) tasks, mainly via the university VLE. This will provide you with the opportunity to practise the skills taught in class and review new knowledge. You will also be able to demonstrate your development as an independent learner through the completion of a reflective journal.”

91. Example descriptions of the summative assessments include the following:

#### ***“Academic Seminar Discussion***

For this assessment you are required to research a topic designated by your tutor and to discuss in a seminar setting an aspect of the topic framed by a discussion question. You will work with your tutor and classmates to develop a critical understanding of the topic in preparation for the assessment.

...

#### ***Reflective Journal***

For this assessment you will be required to complete a total of five tasks which will each contribute to the development of a Reflective Journal. You will be expected to demonstrate an ability to reflect on various aspects of your learning, identify strengths and weaknesses, and develop action plans based on this analysis.

...

#### ***Portfolio***

You will be required to complete a total of five tasks which each contribute to the development of a portfolio. These will include:

- o Email communication task

- o MS Word task
- o MS Excel task
- o MS PowerPoint task
- o Referencing & citation task

You will be provided with clear guidelines for the completion and submission of each of these tasks.”

92. In the hearing we were taken to the instructions and mark scheme for the Email communication task, which involves sending an email with a screenshot of their lesson schedule attached. Over half the marks are for basic linguistic content, with the remaining marks for tasks such as correctly entering the email address of their tutor or setting the calendar view to “month”.

93. The learning outcomes of this course are identified as follows:

“Evidence understanding and awareness of a range of academic skills, including time management, group work and organising resources to prepare and produce academic work in readiness for study at Level 4.

...

Recognise own personal strengths and weaknesses in relation to a range of academic study tasks through the process of self-reflection, and identify strategies to further develop these skills.

...

Recognise citation and referencing techniques in academic work and use them appropriately.

...

Apply appropriate communication skills through participation in an academic seminar discussion.

...

Identify and apply effective digital literacy skills in the context of academic study.”

### ***Research Project***

94. The module aim is stated as follows:

“The aim of this module is to help you combine your language and academic skills development with your pathway subject knowledge through the production of a research project, consisting of an academic essay and a presentation.

The module is designed to enhance your engagement with your target degree subject area at a language level appropriate for undergraduate level study.”

95. The module content and learning methods are set out as follows:

***“What will you learn on the module?”***

This module provides you with an opportunity to select an area of interest related to your target degree and explore this in the context of academic study. You will be required to complete a number of formative tasks which will help guide you through each step of the process of developing an academic essay and an individual presentation.

The module will develop the key knowledge and core skills required for the production of an academic project and presentation, such as research skills, paraphrasing, referencing and presentation techniques.

***How will you learn?***

All learning is delivered through interactive seminar-style workshops - during these lessons, you will be expected to participate actively and interact with your tutor and the other students in your group.

This approach not only enhances the development of your English language skills but also creates an environment where you can share learning and knowledge.

In addition to the classroom-based lessons, you will be expected to complete regular directed learning (self-study) tasks, mainly via the university VLE. This will provide you with the opportunity to review and assimilate new and extended knowledge and also to demonstrate your development as an independent learner.

You will have regular individual tutorials with your Research Project tutor and will benefit from targeted formative feedback on the directed learning tasks set during the course. You will be expected to respond to this feedback and demonstrate independent learning skills.”

96. Example descriptions of the summative assessments include the following:

***“Extended Essay***

For this assessment you are required to plan, research and write an academic essay on a topic related to your future field of study. You will work with your tutor to formulate an appropriate essay title and you will be expected to submit a draft essay for formative feedback before the final submission. You should write 1,500 words (+/- 10%).

There are a number of stages in the development of this piece of work – the completion of each of these stages will guide you towards how to write effectively in an appropriate structure and style for university-level study.

***Individual Presentation***

For this assessment, you will be required to give a presentation about your Extended Essay topic. Your presentation should last for 10 minutes and you must use PowerPoint to create your slides. There will then be a 5-minute Q&A session when your tutor and your peers will ask you some further questions on the information you have provided during your presentation.”

97. The learning outcomes of this course are identified as follows:

“Plan and develop a researched essay related to the future course of study at undergraduate level, using an appropriate written structure.

...

Show an ability to paraphrase and summarise ideas in an appropriate written or verbal form.

...

Recognise and use appropriate referencing and citation techniques.

...

Use effective communication skills through the delivery of an academic presentation.

...

Demonstrate an ability to respond to feedback provided on set tasks.”

### ***Pathway Specific Modules***

98. In addition, two modules are undertaken which are specific to the student’s chosen pathway. These include Business Environment, Management Fundamentals, Foundation Mathematics, Problem Solving, Introduction to Creative Practice and Introduction to Media.

99. The aims and outcomes of these courses do not reference English language and the assessments do not appear to be particularly tailored to assessing English language any more than any subject-specific exam might be expected to do.

100. We have been provided with the mark scheme and assessment criteria for certain of these modules. For some, such as maths and problem solving there does not appear to be a significant linguistic element. For others, such as Business Environment, 20% of the marks relate to language, with a further 30% for “Structure and Content”. However, the content here is not substantive, but relates more to effective use of language such as “Do the main body paragraphs use topic sentences to introduce each area of research?” and “Does the conclusion link back to the introduction and highlight key facts?” Substantive content is covered by the “Research” heading and accounts for 40%. The remaining 10% of marks is attributable to “Task Engagement & Fulfilment of Criteria” and covers issues such as conformity with word count and correctly completing the cover sheet.

### **Entry and Offers**

101. Prospective students apply for the IFP via the online application process at <https://qa.solent.ac.uk/pathway/>. The application goes to the QAHE admissions team.

102. Under the QAHE Services Agreement (Schedule 1, Part 1, 1.2.6) QAHE is required to:

“refer all applications for admission to the College to the University for a final decision on whether to offer a place. This shall be subject to a Service Level Agreement, with a commitment from the University to endeavour to turn around admission decisions within 24 hours where possible, and in any case not later than within 48 hours”

103. Any offer or rejection letter for applicants of the IFP course comes from QAHE on behalf of SPCL.

104. In his witness statement Mr Slater explained that:

“Because of the visa requirements all the students have to be registered as such with the University. SPCL makes the offer to a student to confirm they can become a student but that then has to be processed by the University’s admissions team who are also responsible for issuing the CAS. Once the offer has been taken up and the course commences the student is entered into Solent University’s system as their student and forms part of the overall student numbers reported by the University to the Office for Students. The student might be enrolled in duplicate on systems for SPCL but there is no formal recognition that the student is a student ‘of’ SPCL. SPCL is required to and so does provide attendance data to allow Solent University to comply with the tier 4 Visa licence.”

105. We were provided with sample offer letters. The content of these letters was agreed by the University. They are headed “Solent University Southampton in partnership with QA” and “Your application to Solent University Pathway” they state that the applicant has been offered a place on a specified pathway course and then state:

***“Progression***

Progression on to the academic programme [BSc/BA/BEng] is subject to you successfully completing the International Foundation Programme with the grades below:"

106. The letter also states:

***“Solent Pathway Campus - A Solent University and QA Higher Education partnership***

Pathway programmes such as the one you have applied for are delivered by Solent Pathway Campus, a college of Solent University which is jointly owned by Solent University and QA Higher Education – a UK higher education provider. These programmes are validated by the University and taught by Solent Pathway Campus staff. The courses are designed to prepare you for the seamless transition to an undergraduate degree.”

107. The letter is signed by the Director or Head of Admissions “Pathway Admissions Office, Solent University Pathway”.

### **Course delivery**

108. QAHE provides the teaching team and teaching materials for the IFP.

109. The four core modules are led by tutors who hold English for academic purposes qualifications. They account for approximately 70% of the teaching time on the two term course.

110. Specifically, students undertake 16-20 hours of taught/face to face learning every week. Over the course of the year, 14 of every 20 hours of that learning is allocated to the four core EAP led modules which is the basis of the assessment that approximately 70% of the course is directed to English language tuition. The remaining 7 hours are directed to learning directed to the chosen subject in a pathway module which is designed to enhance knowledge and skills in the general area of intended study.

### **Qualification and Progression**

111. The IFP is provided by SPCL. Successful completion of the IFP results in a “FdCert” qualification, awarded by the University.

112. This is recognised as a level 3 qualification within the NQF. A-levels are also NQF level 3.

113. Successful completion of the IFP entitles students to commence an undergraduate degree at the University. The degree that is ultimately awarded if the student’s progress is NQF level 6.

114. The IFP is a separate course to any subsequent degree. While the University awards both qualifications, the IFP is provided by SPCL and any follow-on degree is provided by the University.

### **International students**

115. Only international students take the IFP.

116. There is no regulatory cap on the fees that the University can charge international students on its degrees. Such students are therefore highly desirable for the University.

117. The evidence of Mr Slater was that income from international students is important to universities who struggle to make any money from undergraduate degrees. The evidence of Mr Ridley was that one reason recruitment of international students is important is because of the fee income it generates.

118. Mr Ridley's evidence was also that international students were important because they create a diverse educational environment. We consider this to be of secondary importance for both the University and SPCL, compared to the fee income they generate. As noted at the hearing the regulatory requirements to report diversity relate more to socio-economic disadvantage and other factors among UK students. Further minutes we reviewed suggested that the University had concerns that too great a concentration of IFP students were coming from one country.

#### **COLLEGE OF A UNIVERSITY**

119. We first consider the five highly relevant features/questions set out by Lord Kitchen at [53] of *SAE*.

#### **Whether the University and SPCL have a common understanding that SPCL is a college of the University**

120. It is evident from recital (B) of the University Services Agreement, inserted by the Addendum Agreement (see above at [88]), that there is mutual recognition that SPCL is a college of the University.

121. This is also evident from the standard offer letters to prospective students, which refers to SPCL as a "college of Solent University" (see above at [106]).

122. This factor is clearly met. HMRC accept this to be the case.

#### **Whether SPCL can enrol or matriculate students as students of the University**

123. SPCL is given the right to recruit students (above at [60] and [66](7)).

124. Under the University Services Agreement SPCL is required to ensure that the students are enrolled as students of the University (above [66]((5))). The counterpart of this obligation is the requirement of the University to register those students (above at [64](1)).

125. The final act of enrolment is thus done by the University, not SPCL. HMRC therefore say that this factor is not met.

126. SPCL says that it is artificial to concentrate on this final stage in the process leading to enrolment. They say that to do so wholly misses the point of this factor which is that the enrolment of the students as students of the University demonstrates integration between the University and the College as opposed to being a function exercised by one independently of the other.

127. SPCL note the contractual framework ensures that the students are students of the University. Further they observe that the oral evidence showed there are four elements leading to enrolment, each done by SPCL:

- (1) making an offer;
- (2) the administrative functions of collecting the required information and documents relating to each student for entry on the University's Gateway system;
- (3) the collection of a deposit, which is done by SPCL; and
- (4) getting the students to agree to the terms and conditions of the IFP.

128. SPCL say it is only the final element of cross-checking documents and entering the student as a student of the University that is done by the University.

129. Further, SPCL say that it is artificial to divorce enrolment from induction, which is done jointly by the University and SPCL.

130. We agree with SPCL on all these points. We recall that the point of these factors is to identify integration between a college and a university as evidence that their educational activities and objects are indistinguishable. We consider it particularly relevant that the contractual framework has been established so the students of SPCL will be students of the University. Whilst it is the University that makes them its students, by entering them onto its system, the contractual framework ensures that all SPCL IFP students are students of the University.

131. Whilst HMRC have referred in their skeleton to a number of passages in *St Patrick's and St George's University Ltd v HMRC* ("*St George's*") [2021] UKFTT 13 (TC); [2021] SFTD 675 we do not find these of assistance. We accept that the mere fact that as a matter of course students are enrolled is not enough: which *St George's* is cited as authority for. However, what we have here goes well beyond that due to the legal framework and the involvement of SPCL in the enrolment process. In any event, neither decision binds us.

132. We therefore find that this factor is met.

**Whether those students are generally treated as students of the University during the course of their period of study**

133. This factor is not disputed by HMRC.

134. Under the contractual arrangements the IFP students are entitled to all usual rights, benefits and access to facilities available to other students of the University (including the provision of a University ID card and access to accommodation services): [64](1)64(1) above. They are bound by the Academic Policies and subject to the disciplinary and appeals procedures within the Academic Policies: [66](5) and (8) above.

135. We also heard in evidence that University academics from the departments/degree courses the IFP feeds deliver occasional lectures. We find this further evidence of the IFP students being treated as students of the University.

136. HMRC suggest that this factor is to be considered in the context of the University's visa and regulatory obligations to ensure that academic standards are maintained. That is why they suggest this factor is met. We disagree. We consider it is clear that the overriding purpose of the IFP is to provide a pipeline of international students for the University, due to the fees they generate: [118] above. We accept SPCL's submission that the true reason why they are treated as students of the University is to create a seamless transition to enrolment on the subsequent degree course of the University and so ensure they are more likely to choose to progress to the degree and stay on it (and so pay a full three-years' further fees).

137. We note that a further reason why students were said to need to be enrolled was to enable them to benefit from the University's copyright licence. We accept this is a benefit, but on the evidence before us we find that it is only that: a benefit but not the purpose of the arrangement.

138. We therefore find that this factor is met.

**Whether SPCL provides courses of study which are approved by the University**

139. Again, this factor is not disputed by HMRC.

140. The courses are approved by the University and result in the award of a Foundation Certificate by the University.

141. The University's approval of aspects of the course is mandated by the University Services Agreement: [64(3)](3), [65] and [66](1) above.

142. The exams are marked by QAHE but they are moderated by the University.

## **Whether SPCL can in due course present its students for examination for a degree from the University**

143. The IFP leads to the FdCert which is NQF level 3 qualification. Successful completion of the IFP also allows students to automatically progress to the degree at the University which they pre-selected when applying for the IFP. That degree is a NQF level 6 qualification awarded by the University.

144. HMRC say to satisfy this factor the qualification must be of “university level education”, which they say is at least NQF level 4 (they do not require it to be NQF level 6). HMRC say, in the absence of such, the University and SPCL cannot have the same objects. The University’s objects are to provide university level education (of at least NQF level 4). They say SPCL’s object is to provide a lower level of education (NQF level 3) as well as to recruit international students and increase revenue for the University.

145. HMRC say that as the IFP is primarily intended to give international students an opportunity to gain entry to UK degree courses, it is therefore a prior or preliminary step to a degree course. They say that comparisons with the four-year foundation courses offered by the University are misconceived, because those courses are integrated with a degree rather than being a standalone qualification. In any event, they are offered by the University, and a university is an “eligible body”.

146. HMRC cite a number of authorities to support this interpretation.

147. First, HMRC’s skeleton argument says:

“as cited in *St. George’s* at [159], Case C-319/12 *Minister Finansow v MDDP p z oo Akademia Biznesu, sp komandytowa* [2014] STC 699 at [39] makes it clear that:

- i. There is no general exemption for supplies of educational services without consideration of the objects pursued by non-public organisations providing those services; and
- ii. Member states have a discretion, subject to the principles of EU law, in setting their rules for recognising whether an organisation has similar objects to a body governed by public law which provides the same services. [Emphasis added].”

148. This is somewhat misleading. Paragraph [39] of the judgment of the CJEU in that case actually says:

“39. The answer to Question 1 is, therefore, that point (i) of art 132(1), art 133 and art 134, of the VAT Directive must be interpreted as meaning that they do not preclude educational services provided for commercial purposes by bodies not governed by public law from being exempt from VAT. However, point (i) of art 132(1) of that directive precludes a general exemption of all supplies of educational services, without consideration of the objects pursued by non-public organisations providing those services.”

149. There is, therefore, no reference to “provides the same services” on which HMRC rely. While the passage supports (i) it provides no support for (ii). Indeed, a word search of the CJEU’s judgment reveals it at no point uses the phrase “provides the same services”. I am not bound by *St George’s*. To the extent it is authority for HMRC’s case on this point I decline to follow it, as the reasons it appears to give in support of proposition (ii) are not supported by the relevant CJEU caselaw.

150. Second, HMRC rely on a passage in the judgment in *C&E Commrs v School of Finance and Management (London) Ltd* [2001] EWHC 1175 (Ch); [2001] STC 1690 where Burton J says:

“I conclude that the tribunal was entitled, after weighing up the factors, to be influenced at the end of the day by the fact that the ‘fundamental purpose of [SFM] is to provide education services leading to the award of a university degree’ by the university.”

151. However, that case pre-dates *SAE*, so Burton J is not considering Lord Kitchin’s factor (v). In any event that case concerned the award of a degree: that is therefore why he mentions a degree. He was not saying anything less would not do. We therefore find no support for HMRC’s position in this appeal from that case.

152. Third, HMRC rely on *C&E Commrs v University of Leicester Students’ Union* [2001] EWCA Civ 1972; [2002] STC 147, where at [36] Gibson LJ said:

“just as Note 1(a) covers school supplying primary and secondary education, so Note 1(b) in my view, covers Universities and other entities supplying university education.”

153. However, he is not there specifying that the education need be of a certain level. That is evident from the context of the decision. He immediately goes on to say:

“If it had been intended that note (1)(b) should cover entities with functions and purposes other than the supply of education, such as a students’ union, I would have expected that to have been made explicit.”

154. Here Gibson LJ is saying that a students’ union (that does not supply education) is not within the exemption. That is indeed what the case was about. We therefore find no support for HMRC’s position in this appeal from that case.

155. HMRC also say that as a matter of logic, HMRC’s position must be correct, since a college and university cannot have similar objects if they are supplying different levels of education. However, we note that the University itself supplies a four-year degree with a foundation year, targeted at domestic students. Whilst that is a single degree, and the IFP is a separate course (leading to a degree) this still demonstrates that SPCL is providing a level of education that is also provided by the university. The fact that the IFP is a stand-alone course would seem irrelevant, if one is focusing on the level of education, ie what is taught (as opposed to the level of qualification, ie what is achieved by the award date).

156. In any event, we disagree with what HMRC claims to be a matter of logic. We consider that a major object of the University is to recruit international students, for financial reasons: [116]-[118] above. The function of the IFP is to provide them with international students. Even if the University does not run its own foundation programs it would still be open to us to find, and on otherwise identical facts we would have found, the University and SPCL to have similar objects for this reason. The IFP provides a seamless transition for international students to progress to degrees at the University.

157. We note that Lord Kitchin refers in factor (v) to a “degree.” HMRC do not seem to place particular emphasis on this, as they accept an NQF level 4 qualification would suffice.

158. The context of the judgment in *SAE* was university level courses and so it is understandable that Lord Kitchin expressed himself in such terms. There is nothing to suggest that Lord Kitchin was intending to exclude any other kind of qualification other than a degree level qualification. The Supreme Court was required to determine the dispute before it by construing the legislation. It was not and did not set down a new definition of what type of education was included and what was excluded from the exemption. HMRC have taken the

precise phrase used by the Supreme Court in *SAE* to indicate that the provision of courses to candidates presented for any other type of qualification other than a degree means that the course provider cannot be a college of a university.

159. Whilst certain passages in *SAE* refer to “University education” they do not refer to “University level education.” We read those passages as referring to education that is delivered by a university.

160. The approach of HMRC is clearly flawed because the legislation makes no reference to any restriction based on whether candidates are presented for a degree or not. It is clear from the evidence that universities (including the University) offer qualifications other than degrees. Further, the evidence shows that the content delivered as part of the IFP is also delivered by universities (and other entities) as part of an “International Year 1” or the foundation year of a 4 year degree course. There is therefore no basis for contending that the content of the courses falls outside the scope of “university education”.

161. We find this factor met on the basis SPCL can present students for the award of the FdCert by the University.

### **Other factors**

162. SPCL states there are other factors, which we consider below. HMRC say these other factors are irrelevant. If HMRC were correct on that, we would still find in favour of SPCL on the “college” point, as we consider the five factors above compel the conclusion that SPCL is a college of the University, due to the evident relationship between the IFP students and the University and the degree to which the activities of SPCL are recognised by and integrated with the University.

163. SPCL also says the following six factors are relevant in addition to the five “highly relevant” factors identified by Lord Kitchin:

(1) **Ownership:** SPCL is a (partly-owned) subsidiary of the University with University appointed directors on its board. Here we consider that ownership of itself is not relevant. However in the present context where it is accompanied by significant control, evidenced through the appointment of directors and the Shareholders Agreement (above at [54]-[59]), we consider it to have some weight in demonstrating integration. (HMRC suggested that SPCL was a subsidiary of both the University and also QAHE. We accept it is a joint-venture between the University and QAHE, however the majority shareholder is the University. We do not regard it as the natural use of English to refer to a minority shareholding as a subsidiary.)

(2) **Examination and Assessment:** the University validates the courses and provides the results to students through its portal. The validation is considered under factor (iv). We do not consider the method of providing results through the portal relevant. Accordingly we place no weight on this additional factor.

(3) **Visas:** the University is the sponsor for the students’ visas. We consider this to be of some relevance. Maintaining the Tier 4 licence issued by the Home Office is clearly of critical importance to the University, as it relies on international students due to the higher fees they pay. To keep that licence they are required to achieve 85% course completion rates, calculated including the IFP. The fact the University is willing to sponsor the IFP students indicates those students are important for the University (because they go on to pay fees to the University when they progress to the relevant degree). The visa sponsorship of those students shows integration between SPCL and the University.

(4) **Development:** The University actively monitors the IFP and instigates appropriate changes. This is evidenced including by how the University monitors progression rates. However, we consider this largely overlaps with considerations under (iv) above. Accordingly we place no weight on this additional factor.

(5) **Regulation:** regulation of the pathway course is through the University. SPCL is not separately regulated by the Office for Students, but regulated through the University. We accept this to be the case. However, SPCL's written case on this point largely focused on progression rates, as such it overlaps with the visa factor considered above. Accordingly we place no additional weight on this factor.

(6) **Marketing:** in marketing materials the pathway is described as a Solent University pathway, and being taught on Solent University's main campus and the access to facilities of the University is specifically highlighted as a feature of the courses. This factor overlaps with factors (i) and (iii) (although it is more focused on prospective students). As such we place no additional weight on this factor.

## Conclusion

164. Giving weight to the additional factors of ownership and visas fortifies the conclusion we reached at [162] above. Standing back and looking at the evidence in the round we find that the relevant factors compel the conclusion that SPCL is a college of the University, due to the evident relationship between the IFP students and the University and the degree to which the activities of SPCL are recognised by and integrated with the University.

165. We finally note SPCL relies on an example given in HMRC's guidance (example three at VATEDU39360). We place no weight on that. HMRC's guidance is not law and SPCL did not suggest the Tribunal had any public law jurisdiction on this appeal.

## TEFL

166. This ground is an alternate argument to the first ground. Under the statutory framework it cannot apply if (as we have found) SPCL is a college of the University. Nonetheless, we briefly consider this in case we are wrong on the first ground, as we have heard argument on the issue.

## Are the supplies by SPCL supplies of TEFL?

167. HMRC's primary case on this is that the supplies are not TEFL. HMRC state that the supplies do not meet this definition as (i) they are at too high a level and (ii) they are not general English but for a specific (academic) purpose.

168. HMRC rely on the definition of the VAT & Duties Tribunal quoted in *Pilgrims*, which it will be recalled is:

“The expression ‘teaching English as a foreign language’ is, in our judgment, apt to mean all that is necessary for the purpose of imparting to the student the grammar, vocabulary, spelling, and usage of the English language and of assisting the student to take in, retain, understand, and think in that language so as to be able to communicate in it, orally and in writing.”

169. However, we find there is nothing in this definition to support HMRC's view that TEFL must be at a particular level or for general purposes.

170. We place no weight on the passage in *Hansard* which HMRC referred us to. It appears to be a speech by a backbench MP, rather than the sponsoring minister, so is not a resource to which recourse may legitimately be had under the principle in *Pepper (Inspector of Taxes) v Hart* [1992] UKHL 3; [1992] STC 898. There is also no ambiguity or obscurity that would permit such recourse to *Hansard*. In any event, we do not find it relevant.

171. It is SPCL's case that what is being supplied is EAP, which is said to be a branch of TEFL. In support of this we have in evidence (annexed to the Further and Better Particulars) a print-out from the website of the "EAP Foundation.com" which states:

***"EAP: a definition***

English for Academic Purposes, or EAP for short, is the English which is needed to study or conduct research using that language. It is most commonly associated with preparation for undergraduate study, via short (4-12 week) pre-session courses, i.e. ones which take place before the study begins, though many other EAP contexts exist, including courses to prepare students for post-graduate study, longer courses such as foundation year programmes, and courses which take place at the same time as the study, called in-session courses.

...

**A family tree of ELT**

Another way to understand EAP is by viewing it in the family tree of English Language Teaching (ELT), as shown below (based on Hutchinson and Walters, 1987). ELT can be divided into English as a Mother Tongue (EMT) and English as a Second Language (ESL) or English as a Foreign Language (EFL), depending on whether it is studied in an English speaking country (ESL) or not (EFL). EFL/ESL are sometimes referred to by other names, for example EAL (English as an Additional Language) and ESOL (English for Speakers of Other Languages), in deference to the fact that for many learners, English is not the second but the third, fourth or more language they have learnt. ESL/EFL can be sub-divided into General English (GE), and English for Specific Purposes (ESP). General English, which is mainly for exam purposes, is the form learners are most familiar with, since it is the kind of English taught in schools. Due to the fact that most GE students are too far from real communication in English to have any real need to study it, GE is sometimes referred to as TENOR (Teaching English for No Obvious Reason), which directly contrasts it with ESP, for which there is a specific purpose. ESP can be sub-divided into English for Occupational Purposes (EOP), for example English for business or English for law, and English for Academic Purposes (EAP)."

172. This is then represented by a diagram. It is therefore apparent that on this definition English as a second or foreign language are seen as identical. This divides into English for Specific Purposes ("ESP"), which includes EAP, and general English.

173. We also have in evidence a webpage from the British Council entitled "Teaching English for Academic Purposes (EAP)". In essence it confirms that EAP is a branch of ESP, which contrasts to general English. While it does not expressly state ESP and general English are branches of TEFL, it corroborates what was said on the EAP Foundation.com website. The website states:

"As EAP has the broad aim of helping learners to study or research in English, it covers a wide range of academic communicative practice including:

- Pre-university, undergraduate and postgraduate teaching (from materials design to lectures and classroom activities)
- Classroom interactions (tutorials, feedback, seminar discussions)
- Research genres (journal articles, conference papers, grant proposals)
- Student writing (assignments, exams, dissertations)."

174. This therefore suggests that EAP can be at a range of levels, including university level.

175. Both websites contain references to various academic sources on which they are based, suggesting that they are well researched documents. We consider these are documents on which reliance can be placed.

176. On the basis of these materials we find that EAP is part of TEFL. There is no requirement for EAP, and therefore TEFL, to be of a basic level. Similarly, there is no requirement for TEFL to be general English, as it also includes ESL.

177. It is therefore clear that the teaching on the IFP (discussed at [70] to [100] above) includes TEFL. However, there is a skills aspect too (HMRC refers to it as methodology).

178. Thus, if we are wrong on the question of whether SPCL is a college of the University, because it provides TEFL it would be an “eligible body” by virtue of Note 1(f).

### **The correct approach**

179. It will be recalled that Note 2 states:

“A supply by a body, which is an eligible body only by virtue of falling within Note 1(f), shall not fall within this Group insofar as it consists of the provision of anything other than the teaching of English as a foreign language”

180. It will be recalled HMRC assert that “insofar as” means “if”. It follows they say, that if the supplies of IFPs are TEFL then they must not consist of anything other than TEFL to benefit from the exemption.

181. We consider that is a wholly implausible reading of the legislation. “Insofar” means to the extent, not if. An exemption should be strictly but not narrowly interpreted. When pressed on the point, HMRC were unable to adduce any authority to support their interpretation. We consider that HMRC’s interpretation on this point is so at odds with the language Parliament has chosen to use that it is simply unarguable.

182. HMRC then say that the phrase “consists of” in Note 2 requires the Tribunal to apportion between the constituent elements of the supply and not (contrary to SPCL’s submission) apply the principles in *CPP/Levob*.

183. In support of relying on the principles in *CPP/Levob* SPCL refers to *Pilgrims* where Schiemann LJ stated (at p887):

#### ***“Conclusions on the proper construction and application of the 1994 Act***

1. *Pilgrims* has been defined as an eligible body. That is achieved by note (1).
2. Note (2) should not be construed so as to exclude supplies which are ‘closely related’ to teaching of English as a foreign language because if the note were to be construed in such a way it would put the United Kingdom in breach of the Sixth Directive as I have construed it.
3. Note (2) can be given a sensible construction consonant with the Sixth Directive (construed as the parties are agreed that it can be construed) namely by excluding, for instance, the supply of teaching of German by language schools.
4. The task of the court is to look at each course separately and to adopt in each case the approach indicated in [CPP] at 293, paras 29–31. Thus the court must (i) identify the various supplies involved, (ii) establish whether one or more principal supplies are involved and (iii) if there are more than one principal supplies establish, in relation to ancillary supplies, to which principal supply each ancillary supply is ancillary.”

184. HMRC say this is not relevant to the instant case, as *Pilgrims* concerned supplies that were “closely related” to education (item 4 of Group 6 of Sch 9) not education/vocational training (item 1 of Group 6 of Sch 9). Further they say that as the Value Added Tax (Education) Order 1994, which introduced Notes 1(f) and Note 2, pre-dates *CPP* (1999) and *Levob* (2005), Parliament cannot have intended those cases to have applied when drafting the legislation.

185. We agree with SPCL that it is incorrect of HMRC to assert that the reasoning in *Pilgrims* does not apply to item 1. This is clear from the judgment: for example (at pp887-888) point 1 under the heading “Conclusion”, where Schiemann LJ explains that *Pilgrims* would succeed either under the item 1 or item 4 route that they argued.

186. Further HMRC’s argument regarding the timing of the Value Added Tax (Education) Order 1994 fails due to the declaratory theory of adjudication.

187. We therefore agree with SPCL that the correct approach is, first, the Tribunal must, in line with *CCP/Levob* identify if there is a single supply. In *Levob*, the CJEU identified the critical question as being whether there were:

“two or more elements or acts supplied by the taxable person to the customer, being a typical customer, are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split”.

188. This approach, which builds on *CPP*, contains the following four components:

- (1) whether the link between the different elements are “so closely linked”;
- (2) so that those different elements form a single, indivisible economic supply;
- (3) which can be tested by asking whether it would be artificial to split those elements into separate supplies;
- (4) all to be considered from the viewpoint of a typical customer.

189. If there is a single composite supply the characterisation of that supply (for the purposes of determining whether is an exempt supply) should be done by applying the “predominant element” test, where this was possible on the facts. Where it is not possible then other approaches, such as asking what the overarching supply is, were permissible: *Gray & Farrar* at [41] and [46]-[50].

### **Is there a composite supply?**

190. The evidence shows that there is a single supply of the IFP. None of the component parts are distinct from the point of view of the student, they together contribute to the overall object of preparing for degree level study and they are taught as one course in a series of modules designed together to produce the relevant learning outcomes.

191. It would be highly artificial to separate out the content based modules from the other modules given the overall nature of the design of the course and the fact that they are designed to be delivered over the course of a single year to a student. Put another way, neither element of the course would be of utility to the student who has to pass the course as a whole. It would not be sufficient if the student merely learned EAP but nothing else.

192. There is in reality a package of modules which are taken as part of a single course for one qualification. On any given pathway the modules are not optional and are designed together to achieve the identified learning outcomes. There is a single price covering the whole course.

193. HMRC have not identified any basis for contending that the supply should be split. Although they were extremely reluctant to answer the question at the hearing, when pressed they appeared to accept that if we found that, as a matter of law, *CPP/Levob* applied it would be properly characterised as a single supply.

194. We therefore find there to be a single supply.

### **Dominant element**

195. Here, while acknowledging there to be a significant amount of skills based education (see above [70]-[100]), we find the dominant element to be TEFL for the following reasons:

- (1) the courses are specifically designed for students from outside the UK who do not have English as their first language and who need EAP in order to progress onto degree courses at the University;
- (2) around 70% of the teaching time (four out of the six modules) on the two term pathways is led by EAP qualified tutors and all the tutors on those courses are required to hold a recognised TEFL qualification;
- (3) three of the core modules have as their objective helping learners to study and research in English. While SPCL says that all four do we do not find this to be the case for the Applied Academic Skills module. We do however find even with the Applied Academic Skills module there is a high linguistic component, for example over half the marks on the email assignment being attributable to linguistic matters.

196. While the IFPs have different subject related modules (depending on the degree course chosen by the students in advance), the core modules are common to all IFP courses.

197. In the case of the three-term programme the EAP content is even more pronounced since it includes an additional non-credit bearing module of Language and Skills for Academic study to help learners develop their English language skills to the level required to begin the IFP.

### **Conclusion**

198. If we were wrong on our analysis of SPCL being a college of the University, we would allow the appeal on the basis that the IFP is a supply of TEFL.

### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

199. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**Release date:** 09 May 2025